

David S. Catuogno
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Honorable Marc L. Barreca
Chapter 7
Hearing Location: Seattle, Rm. 7106
Special Set Hearing Date: April 24, 2024
Hearing Time: 1:30 p.m.
Response Date: April 17, 2024

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

ASSET REALTY LLC

Debtor.

Case No. 23-10326-MLB

**DECLARATION OF DAVID S.
CATUOGNO IN SUPPORT OF MOTION
OF CENTURY 21 REAL ESTATE LLC
FOR ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIMS**

I, David Catuogno, of full age, declare that:

1. I am a partner at the law firm of K&L Gates which firm serves as counsel for Century 21 Real Estate, LLC (“C21” or the “Franchisor”). I make this Declaration in support of C21’s motion for allowance and payment of administrative expense claims (the “Motion”) pursuant to which C21 seeks an order allowing, and authorizing payment of a Chapter 7 administrative claim and a Chapter 11 Administrative claim on behalf of C21 in the within bankruptcy case. This declaration is based upon my personal knowledge and a review of the documents relative to the above captioned action.

2. Attached hereto as Exhibit A is a true and correct copy of an email I received on February 21, 2024, attaching a schedule of post-conversion payments received by the estate.

3. Attached hereto as Exhibit B is a true and correct copy of an email I received on February 21, 2024, attaching a schedule of deposits.

DECLARATION IN SUPPORT OF
CENTURY 21 REAL ESTATE LLC MOTION FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE
CLAIMS - 1
318356648.1

K&L GATES LLP
ONE NEWARK CENTER
TENTH FLOOR
NEWARK, NEW JERSEY 07102
TELEPHONE: (973) 848-4000
FACSIMILE: (973) 848-4001

4. Attached hereto as Exhibit C is a true and correct copy of an email I received on April 2, 2024.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

EXECUTED April 19, 2024, at Sherman, Connecticut.

/s/ David S. Catuogno
David S. Catuogno

CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a practice assistant in the law firm of K&L Gates LLP, and on April 19, 2024, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 19th day of April, 2024 at Seattle, Washington.

/s/ Chloe C. Morse

Chloe C. Morse

DECLARATION IN SUPPORT OF
CENTURY 21 REAL ESTATE LLC MOTION FOR
ALLOWANCE AND PAYMENT OF ADMINISTRATIVE
CLAIMS - 3
318356648.1

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Exhibit A

From: Deborah Crabbe <deborah.crabbe@foster.com>
Sent: Wednesday, February 21, 2024 1:21 PM
To: Catuogno, David S. <David.Catuogno@klgates.com>
Subject: RE: Asset Realty - LLC 23-10326-MLB

Attached is what the Trustee has received to date from brokerage sales. The last column on the right reflects what was turned over to the Trustee.

I am still waiting on the accounting for the bank account and was told I would receive that information this morning. Nothing so far.

Deborah Crabbe
Principal

Tel: 206.447.5325 ▪ *Mobile:* 206-953-0482
deborah.crabbe@foster.com

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	CONTRACT DATE	CLOSE DATE	CITY	AGENT/BROKER	TOTAL COMMISSIONS	BROKERAGE SPLIT
1	7/21/2023	1/24/2024	Port Townsend	Melissa Candfield	\$6,875.00	\$1,378.69
2	1/15/2024	1/29/2024	Renton	Celeste Zarling	\$9,020.00	\$1,061.45
3	12/13/2023	1/16/2024	Tacoma	Arron Carr	\$10,875.00	\$1,404.35
4	12/9/2023	1/9/2024	Tacoma	Arron Carr	\$12,750.00	\$1,615.11
5	1/4/2024	1/23/2024	Kirkland	Celeste Zarling	\$55,500.00	\$6,179.47
6	11/27/2023	1/11/2024	Issaquah	Nancy Olmos	\$22,805.00	\$4,261.76
7	12/7/2023	1/9/2024	Auburn	Arron Carr	\$11,250.00	\$1,482.01
8	12/9/2023	1/10/2024	Tacoma	Arron Carr	\$10,812.50	\$1,397.33
9	12/2/2024	1/2/2024	Referral - Yakima	Joseph Bellamy	-	\$2,345.00
10	11/22/2023	1/2/2024	North Bend	Mark Peddeferri	\$14,250.00	\$2,267.83
11	12/8/2024	1/8/2024	Sedro Woolley	Devin Gordon	\$12,900.00	\$2,787.39
12	12/3/2023	12/29/2023	Puyallup	Brian Talent	\$18,675.00	\$3,672.36

TOTAL

\$29,852.75

Exhibit B

From: Deborah Crabbe <deborah.crabbe@foster.com>
Sent: Wednesday, February 21, 2024 6:59 PM
To: Catuogno, David S. <David.Catuogno@klgates.com>
Subject: RE: Asset Realty - LLC 23-10326-MLB

Attached is the accounting I have for deposits made to the Debtor's account in December and the balance that was in the account on 12/22/23 - \$10,210.13). See attached statement.

The Trustee took control of the 3 accounts on January 5, 2024 as noted on the spreadsheet with the total amount the Trustee received in the sum of \$30,011.34. Clearly deposits were made to the operating account after the 12/22/23 conversion date as the amount in the account on 12/22 equaled \$10,210.13.

I am also not sure why Chad is showing two deposits for January 14 and January 20 2024, which are after the date the Trustee took control of the accounts. The Trustee has no record of these deposits and the accounts remain frozen as they were on January 5, 2024. I have called Chad about this issue, but have received no answer.

Long and short is the total amount turned over to the Trustee from the bank accounts equaled \$30,011.34, including two deposits from the Lead Generation Program (as noted in yellow). As provided to you earlier, the Trustee has received the turnover of checks payable to the Debtor in the sum of \$29,852.75.

Please let me know if you have any questions.

Deborah Crabbe

Principal

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FUNDS DEPOSITED INTO BANK ACCOUNT PRIOR TO TURNOVER OF ACCOUNTS DEPOSITS TO TRUSTEE

CONTRACT DATE	CLOSE DATE	CITY	AGENT/BROKER	TOTAL COMMISSIONS	BROKERAGE SPLIT
1	11/16/2023	1/20/2024	Tacoma	Arron Carr	\$12,075.00 \$1,539.23
2	11/15/2023	1/14/2024	Tacoma	Arron Carr	\$9,725.00 \$1,292.84
3	12/1/2023	12/15/2023	Vancouver	Ron Conard	\$15,750.00 \$2,235.28
4	11/14/2023	12/19/2023	SeaTac	Taylor Wolcott	\$5,972.50 \$1,047.03
5	11/11/2023	12/8/2023	Kenmore	Ron Conard	\$30,000.00 \$4,202.27
6	11/14/2023	12/11/2023	Referral -- TN	Celeste Zarling - Owing	- \$2,661.75
7	8/25/2023	11/10/2023	Elma, WA	Tracy Mettier	\$10,650.00 \$1,022.00
8	11/12/2023	12/6/2023	Seattle	Kyle Steppe	\$21,250.00 \$2,667.63
9	10/15/2023	12/7/2023	Portland, OR	Pipeline Referral	N/A \$3,760.00
10	11/2/2023	12/4/2023	Fall City	Stuart Anderson	\$18,300.00 \$2,838.47
11	11/22/2023	11/21/2023	Eatonville, WA	Stuart Anderson	\$20,000.00 \$2,761.76
12	10/27/2023	12/13/2023	Winlock, WA	Tracy Mettier	\$9,125.00 \$1,362.76
13	10/10/2023	11/16/2023	Puyallup	Arron Carr	\$9,975.00 \$1,320.94
14	10/2/2023	11/19/2023	Milton, WA	Devin Gordon	\$27,400.00 \$4,590.62
15	11/4/2023	11/17/2023	Renton, WA	Kristina Hoffman	\$19,375.00 \$4,173.19

TOTAL \$37,475.77

Yellow = pipeline referrals

Funds turned over to the Trustee on January 5, 2024

\$15.63 Acct XXXX5812 Franchise Acct
 \$47.06 Acct XXX1518 Tax Acct
 \$29,948.65 Acct XXX6211 Op Acct

TOTAL FUNDS TURNED OVER TO TRUSTEE ON JANUARY 5, 2024 \$30,011.34

Exhibit C

From: Deborah Crabbe <deborah.crabbe@foster.com>
Sent: Tuesday, April 2, 2024 2:46 PM
To: Catuogno, David S. <David.Catuogno@klgates.com>; Dan Youngblut <dan.youngblut@foster.com>
Subject: RE: Asset Realty [KLG-USE_ACTIVE01.FID3013193]

Yes. I get it. I am not sure what the heck he is thinking.

Deborah Crabbe
Principal

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From: Catuogno, David S. <David.Catuogno@klgates.com>
Sent: Tuesday, April 2, 2024 11:44 AM
To: Deborah Crabbe <deborah.crabbe@foster.com>; Dan Youngblut <dan.youngblut@foster.com>
Subject: RE: Asset Realty [KLG-USE_ACTIVE01.FID3013193]

Thank you.

I am sure you understand where we are coming from

We are dealing with a product that has generated substantial litigation and potential liabilities and C21 has been dragged into the umbrella of that potential liability despite having nothing to do with the product. That being the case, it cannot sign onto a transaction that perpetuates the exposure. If there is a resolution of Kovanen litigation that resolves us, we can have a conversation.

My understanding is that the term sheet and the going forward compliance proposed to Chad are not that onerous. My colleague is somewhat mystified as if this continues, the policy will waste away and Chad will have personal exposure far in excess of what he can hope to earn on the pipeline over next 2 years

From: Deborah Crabbe <deborah.crabbe@foster.com>
Sent: Tuesday, April 2, 2024 2:35 PM
To: Catuogno, David S. <David.Catuogno@klgates.com>; Dan Youngblut <dan.youngblut@foster.com>
Subject: RE: Asset Realty [KLG-USE_ACTIVE01.FID3013193]

Chad is radio silent. I plan to call him again this afternoon. Not sure what the heck he is thinking. I will ratchet up the calls to see if I can get him to respond.

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From: Catuogno, David S. <David.Catuogno@klgates.com>
Sent: Tuesday, April 2, 2024 11:29 AM
To: Deborah Crabbe <deborah.crabbe@foster.com>; Dan Youngblut <dan.youngblut@foster.com>
Subject: RE: Asset Realty [KLG-USE_ACTIVE01.FID3013193]

Hi Deb

On our side, one of our colleagues had a call with counsel for Asset in the Kovanen matter last Friday.

The report i got is that Chad is not agreeable to the revised settlement term sheet and is not willing to entertain any sort of going forward compliance.

I am not sure if that conversation happened before or after you reached out to Chad so i don't know if that is still the status quo or if the landscape has changed.

Please let me know.

Thank you.



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